H.E. Enggartiasto Lukita  
Minister of Trade  
Ministry of Trade (Indonesia)  
M. I. Ridwan Rais Road  
No. 5 Central Jakarta, 10110  
Indonesia  

1 February 2018  

Dear Minister Lukita,  

MINISTERIAL DECREE NO 82/2017 ON ‘THE PROVISION OF THE USE OF SEA TRANSPORTS AND NATIONAL INSURANCE FOR THE PURPOSE OF EXPORT AND IMPORT OF CERTAIN GOODS’  

I am writing on behalf of the International Chamber of Shipping (ICS), which is the principal global trade association for shipowners. ICS represents over 80% of the world merchant fleet, with a membership comprising national shipowners’ associations from 37 countries. This includes members of the Asian Shipowners’ Association (ASA), which is our Regional Partner.  

We understand that on 31 October 2017 the Ministry of Trade issued Decree no 82/2017 with the aim of supporting ‘national maritime transportation companies’.  

The global shipping industry, which ICS represents, is very concerned that the Decree appears to require that transportation of specified products and goods on international voyages, to and from Indonesian territory, must be conducted using Indonesian vessels.  

If our understanding is correct, this would appear to be a form of discriminatory cargo reservation, which would be contrary to accepted international practice and maritime free trade principles that are adhered to by Indonesia’s trading partners, including those in Asia. Cargo reservation is also contrary to the obligations which Indonesia has accepted as a member of the World Trade Organization (WTO) and the commitments that governments have made under the ‘Model Maritime Schedule’ as part of the ongoing Doha Round.
If the Decree is implemented as drafted, this is likely to have damaging impacts on the wider Indonesian economy and those industries whose cargoes will be directly affected. Implementing such protectionist measures would also limit competition in Indonesian shipping trades and almost certainly lead to an increase in shipping costs.

**Protectionist Cargo Reservation Provisions**

Article 3 (1) of the Decree appears to restrict the export of coal and/or crude palm oil (CPO) to vessels “controlled by national maritime transportation companies” only from 26 April 2018. Article 3 (2) appears to restrict the import of rice to vessels “controlled by national maritime transportation companies” only from the same date. However the definition of ‘national maritime transportation companies’ (provided under Article 1, paragraph 5) is not entirely clear.

Article 5 (1) contains an exemption for foreign shipping companies to provide such services, in the event that national companies’ ships are limited or unavailable. Nevertheless, if our understanding of Articles 3 (1) and 3 (2) is correct, then the global shipping industry still has serious concerns about what appears to be a system of discriminatory cargo reservation, contrary to accepted international principles.

Consistent with accepted free trade principles, international shipping companies operating in Indonesia should be allowed to continue to carry international cargoes (including coal, CPO and rice) without government intervention, provided that those companies adhere to international regulations governing safety, environmental protection and labour standards, to which Indonesia is party as a member of the UN International Maritime Organization (IMO) and the International Labour Organization (ILO).

Such government intervention in the operation of international maritime trade, as well as leading to unfair competition and market distortion, will also reduce confidence amongst international shipping companies, planning future investments in business in Indonesia.

If the Decree is implemented as drafted this would also create an unwelcome precedent that could be emulated by other nations, by adopting retaliatory measures against Indonesian vessels engaged in international trade.
We therefore respectfully request the Indonesian Government to review, remove or amend Articles 3 and 5 so they are consistent with accepted principles of global maritime trade and the commitments governments have made at the WTO.

Query about insurance cover provisions of ministerial Decree

We also note that the Decree seems to require that insurance cover for the import/export of specified products must be purchased from Indonesian insurance companies.

Article 4 (1) appears to stipulate that from 26 April 2018 insurance cover purchased for exporting coal and/or CPO must be obtained from national insurance companies only. Article 4 (2) specifies that insurance cover purchased for importing rice must be obtained from national companies only. Article 5 (2), however, contains an exemption for foreign insurance companies to provide cover, in the event that national insurance companies are limited or unavailable.

With regard to Articles 4 (1) and 4 (2) in particular, it would be highly appreciated if the Indonesian Government could clarify the scope of these insurance cover provisions, noting that our current understanding is that they apply to "goods insurance" only and therefore have no impact on either the P&I or hull and machinery insurance of vessels carrying out the transportation.

---

Before this regulation comes into effect in April 2018, we recommend that the Ministry of Trade should consider in-depth consultations with all affected industries, including the shipping industry (local and foreign companies) and those whose cargoes will be directly affected by the Decree. We also suggest further coordination with other relevant Government bodies, such as the Ministry of Energy and Mineral Resources, the Ministry of Transportation and the Ministry of Foreign Affairs.

As the world’s largest archipelagic nation and an elected Member of the IMO Council, Indonesia is highly respected by the global shipping industry, as a nation of significant importance that adheres to globally recognised maritime principles. ICS therefore hopes that the Government of Indonesia will give our comments and requests for clarification serious consideration.

We look forward to receiving a response at your earliest convenience.

Yours sincerely,

P B Hinchliffe
Secretary General
Copy to:

H.E. Budi Karya Sumadi, Minister of Transportation, Ministry of Transportation, Republic of Indonesia


H.E. Dr. Rizal Sukma, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Indonesia to IMO, Embassy of the Republic of Indonesia, London

Mr. Nur Rakhman Setyoko, Trade Attaché, Embassy of the Republic of Indonesia, London

Mr. Simson Sinaga, Transportation Attaché, Alternate Permanent Representative of Indonesia to IMO, Embassy of the Republic of Indonesia, London

Mr. Vitto Tahar (Minister Counsellor), Economic Affairs Attaché, Embassy of the Republic of Indonesia, London

Mr Kitack Lim, Secretary-General, International Maritime Organization (IMO)

Captain Ang Chin Eng, Secretary General, Asian Shipowners' Association (ASA)

Mr Andreas Nordseth, Chairman, Consultative Shipping Group (CSG)